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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 OYSTER OPTICS, LLC,

18 Case No. 4:17-cv-05920-JSW

19 Plaintiff,

20 v.

21 CIENA CORPORATION,

22 Defendant.

23 **OMNIBUS DECLARATION OF PAUL A.**
24 **KROEGER IN SUPPORT OF PLAINTIFF**
25 **OYSTER OPTICS, LLC'S OPPOSITIONS**
26 **TO CIENA CORPORATION'S MOTION**
27 **FOR SUMMARY JUDGMENT; MOTION**
28 **TO EXCLUDE THE INFRINGEMENT**
29 **OPINIONS AND TESTIMONY OF**
30 **PLAINTIFF'S TECHNICAL EXPERT,**
31 **KEITH GOOSSEN, PH.D., UNDER FED. R.**
32 **EVID. 702 AND DAUBERT; MOTION TO**
33 **EXCLUDE THE VALIDITY OPINIONS**
34 **AND TESTIMONY OF PLAINTIFF'S**
35 **TECHNICAL EXPERT, KEITH**
36 **GOOSSEN, PH.D., UNDER FED. R. 702**
37 **AND DAUBERT; AND MOTION TO**
38 **EXCLUDE THE OPINIONS AND**
39 **TESTIMONY OF PLAINTIFF'S**
40 **DAMAGES EXPERT, STEPHEN DELL,**
41 **PH.D., UNDER FED. R. 702 AND**
42 **DAUBERT**

1 I, Paul A. Kroeger, state as follows:

2 1. I am a member of the State Bar of California and an attorney at the firm of Russ
3 August & Kabat, counsel for Plaintiff Oyster Optics, LLC (“Oyster”) in the above captioned action.
4 I have personal knowledge of the facts set forth herein, and if called upon to testify, could and would
5 testify competently thereto.

6 2. Attached as Exhibit A is a true and correct copy of excerpts from a document that
7 was produced by Ciena in this Action bearing the title “WaveLogic3 Transmitter Electro Optic
8 Design Specification” and which bears a production number commencing with CIENA00102862.

9 3. Attached as Exhibit B is a true and correct copy of an excerpt from Patent Owner’s
10 Preliminary Response in *Cisco Systems, Inc., et al. v. Oyster Optics, LLC*, Case No. IPR2017-01871,
11 filed on October 28, 2017.

12 4. Attached as Exhibit C is a true and correct copy of an excerpt from the Institution
13 Decision in *Cisco Systems, Inc., et al. v. Oyster Optics, LLC*, Case No. IPR2017-01871, filed on
14 February 21, 2018.

15 5. Attached as Exhibit D is a true and correct copy of excerpts from Dino DiPerna’s
16 January 27, 2021 Deposition Transcript.

17 6. Attached as Exhibit E is a true and correct copy of an excerpt from a document
18 produced by Ciena in this action with the production number CIENA00001617. The document was
19 produced as excel spreadsheet and purports to be a “Bill of Materials” or “BOM” for the Ciena
20 WaveLogic3 product NTK539BB. The document attached here has been converted to pdf for the
21 convenience of e-filing.

22 7. Attached as Exhibit F is a true and correct copy of excerpts from Ciena Corporation’s
23 Third Supplemental Objections and Responses to Oyster’s First Set of Interrogatories Nos. 1-2 dated
24 February 23, 2021.

25 8. Attached as Exhibit G is a true and correct copy of an excerpt from a document
26 produced by Ciena in this action with the production number CIENA00001618. The document was
27 produced as excel spreadsheet and purports to be a “Bill of Materials” or “BOM” for the Ciena
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1 WaveLogic3 product NTK539BE. The document attached here has been converted to pdf for the
2 convenience of e-filing.

3 9. Attached as Exhibit H is a true and correct copy of an excerpt from a document
4 produced by Ciena in this action with the production number CIENA00001619. The document was
5 produced as excel spreadsheet and purports to be a “Bill of Materials” or “BOM” for the Ciena
6 WaveLogic3 product NTK539BH. The document attached here has been converted to pdf for the
7 convenience of e-filing.

8 10. Attached as Exhibit I is a true and correct copy of an excerpt from is a true and correct
9 copy of an excerpt from a document produced by Ciena in this action with the production number
10 CIENA00071459. The document was produced as excel spreadsheet and purports to be a “Bill of
11 Materials” or “BOM” for the Ciena WaveLogic3 product NTK539BB. The document attached here
12 has been converted to pdf for the convenience of e-filing.

13 11. Attached as Exhibit J is a true and correct copy of excerpts from Steve Haley’s
14 January 28, 2021 Deposition Transcript.

15 12. Attached as Exhibit K is a true and correct copy of an excerpt from the Petition for
16 *Inter Partes* Review in *Alcatel-Lucent USA, LLC, etc. v. Oyster Optics, LLC*, Case No. IPR2018-
17 00259, filed on November 30, 2017.

18 13. Attached as Exhibit L is a true and correct copy of Plaintiff’s Disclosure of Asserted
19 Claims and Infringement Contentions, served on April 3, 2017.

20 14. Attached as Exhibit M is a true and correct copy of an email from counsel for Plaintiff
21 to counsel for Defendant regarding Fujitsu modulators, dated February 10, 2021.

22 15. Attached as Exhibit N is a true and correct copy of Oyster Optics, LLC’s Third
23 Amended and Supplemental Preliminary Damages Contentions, served on February 24, 2021.

24 16. Attached as Exhibit O is a true and correct copy of an excerpt from Exhibit B to
25 Plaintiff’s Infringement Contentions, setting forth a chart of its specific accusations for the ‘327
26 Patent, served on April 3, 2017.

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1 17. Attached as Exhibit P is a true and correct copy of an excerpt from Stephen Dell's
2 Third Supplemental Expert Report, served on April 30, 2018.

3 18. Attached as Exhibit Q is a true and correct copy of the Declaration of Dr. Keith
4 Goossen in Support of Plaintiff's Opposition to Defendant Ciena's Motion for Summary Judgment
5 and Motions to Strike. This attaches and authenticates and adopts as his testimony Dr. Goossen's
6 Invalidity Report served in this action as well as his infringement report attached as Exhibit 1 to
7 Ciena's declaration.

8 19. Attached as Exhibit R is a true and correct copy of an excerpt from Dr. George
9 Papen's Expert Report regarding Validity, served on February 26, 2021.

10 20. Attached as Exhibit S is a true and correct copy of excerpts from Dr. Keith Goossen's
11 April 8, 2021 and April 9, 2021 Deposition Transcripts.

12 21. Attached as Exhibit T is a true and correct copy of a declaration Dr. Goossen
13 authored in an IPR (IPR2017-01881) concerning the '898 Patent and which was produced to Ciena
14 in this action bearing the production number OYST_CIEN00005500.

15 22. Attached as Exhibit U is a true and correct copy of a declaration Dr. Goossen
16 authored in an IPR (IPR2018-000070) concerning the '898 Patent and which was produced to Ciena
17 in this action bearing the production number OYST_CIEN00012009.

18 23. Attached as Exhibit V is a true and correct copy of an expert report authored by Dr.
19 Goossen in *Oyster Optics, Inc. v. Infinera*, Civil Action No. 2:18-cv-00206, and which was produced
20 to Ciena in this bearing the production number OYST_CIEN00030166.

21 24. Attached as Exhibit W is a true and correct copy of an email thread from March 29-
22 30, 2021 regarding the parties' agreement to depose Dr. Goossen.

23 25. Attached as Exhibit X is a true and correct copy of an email thread from March 21-
24 22, 2021 regarding 40G products.

25 26. Attached as Exhibit Y is a true and correct copy of an excerpt from Optical
26 Internetworking Forum, "100G Ultra Long Haul DWDM Framework Document" which was
27 attached as Exhibit 3 to Plaintiffs' Infringement Contentions.

1 27. Attached as Exhibit Z is a true and correct copy of excerpts from Dr. George Papen's
2 Expert Report regarding Invalidity, served on January 10, 2018.

3 I declare under penalty of perjury under the laws of the United States the foregoing is true
4 and correct Executed on June 21, 2021 at Los Angeles, California.

/s/ Paul A. Kroeger
Paul A. Kroeger

RUSS AUGUST & KABAT